

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Bay State Gas Company

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D.T.E. 06-7

ATTORNEY GENERAL'S MOTION FOR RECONSIDERATION

I. INTRODUCTION

On July 31, 2006 the Department of Telecommunication and Energy ("Department") issued an order ("Order") approving Bay State Gas Company's ("Bay State" or "Company") petition for approval of an incremental firm supply agreement with Northeast Energy Associates, A Limited Partnership.

The Attorney General seeks reconsideration of the Department's Order and its interpretation that G.L. c. 164, § 69I ("Section 69I") does not require Bay State to file an update to its long-range forecast until the fourth quarter of 2006 and its decision to allow Bay State to make resource acquisitions on forecasts for supply and transportation capacity resource needs that do not meet the filing requirements in G.L. 164, § 69I.

II. STANDARD OF REVIEW

The Department may grant a motion for reconsideration if its treatment of an issue was the result of mistake or inadvertence.¹ The Department also may grant reconsideration of previously decided issues when extraordinary circumstances dictate that the Department take a fresh look at the record for the express purpose of substantively modifying a decision reached

¹ *Massachusetts Electric Company*, D.P.U. 90-261-B, at 7 (1991).

after review and deliberation.² A motion for reconsideration should bring to light previously unknown or undisclosed facts that would have a significant impact on the decision already rendered. It should not attempt to reargue issues considered and decided in the main case.³

III. ARGUMENT

Section 69I requires gas utilities to file forecasts every two years and the Department should not allow Bay State to base resource acquisitions on outdated forecasts. According to Section 69I:

Every gas company, except municipal corporations authorized to operate a municipal gas plant under the provisions of sections thirty-four to thirty-six, inclusive, shall file with the department a long-range forecast with respect to the gas requirements of its market area, taking into account wholesale bulk gas sales or purchases or other cooperative arrangements with other gas companies, for the ensuing five-year period. Said forecast of gas requirements shall consist of the gas sendout necessary to serve projected firm customers, and the available supplies, for the ensuing five-year period. ***Such forecast shall be filed at least every two years.*** . . . Said forecasts shall include . . . (1) A description of all then existing agreements with other electric or gas companies for joint planning or joint forecasting of electric power or gas needs and the purchase or sale of electric power or gas or reserve capacity. (2) A forecast of the electric power needs or gas requirements for its market area . . . (3) A description of actions planned to be taken by the company which will affect capacity to meet such needs or requirements . . .

G. L. c. 164, § 69I (para. 2) (emphasis added). The statute also grants the Department the authority to “exempt any electric or gas company from any or all provisions of this section upon a determination by the department and the siting board, after notice and hearing, that an

² *North Attleboro Gas Company*, D.P.U. 94-130-B, at 2 (1995); *Boston Edison Company*, D.P.U. 90-270-A, pp. 2-3 (1991).

³ *Commonwealth Electric Company*, D.P.U. 92-3C-1A at 3-6 (1995).

alternative process is in the public interest.” *Id.* (final para.).

Whether through inadvertence or mistake, the Department, in its July 31, 2006 Order, failed to explain why it allowed the Company to make resource acquisitions on forecasts that do not meet the requirements in Section 69I.⁴ The record establishes that the forecast is over three-and-a-half years old. The plain language of the statute states that forecasts must be filed every two years, and reliance on outdated forecasts is inconsistent with the public interest as determined by the Legislature.

The Department does have discretion to adopt an alternative process that exempts a company from the requirement for a two-year forecast, but may do so only “upon a determination by the department and the siting board, after notice and hearing,” G. L. c. 164, § 69I (final para.). The Department’s Order does not refer to such a proceeding or determination.

Reasoned consistency requires the Department to explain why the Company can rely on a forecast that is outdated.⁵ The Department did not certify the supplemental forecasts as long-range forecasts in its Order, nor did it obtain the siting board’s approval to certify the supplemental forecasts as long-range forecasts through an alternative process.⁶ The Department, therefore, failed to follow the provisions of Section 69I.

⁴ See Order at 10-11.

⁵ *Boston Gas Co. v. Department of Public Utilities*, 367 Mass. 92, 104 (1975) (discussing reasoned consistency).

⁶ Order at 10-11.

IV. CONCLUSION

The Department should allow this motion, follow the statute's requirement that natural gas companies file an updated long-range forecast biennially, and order the Company to file an updated forecast immediately.

Respectfully Submitted,
THOMAS F. REILLY

Jamie M. Tosches
Assistant Attorneys General
Utilities Division
One Ashburton Place,
Boston, MA 02108 - 1598
(p) (617) 727-2200 ext. 2413
(f) (617) 727- 1047

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